IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. No: 716 of 2005

Date of decision:7.12.2006

Jeeva Ram **Petitioner**

Versus

State of H.P. and others **Respondents**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice S.S.Thakur, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr.Shrawan Dogra, Advocate

For the Respondents: Mr.M.S.Chandel, Advocate General with Mr.R.M.Bisht, Deputy Advocate General.

Per Deepak Gupta, J.

This writ petition is directed against the order of the H.P. State Administrative Tribunal in O.A. No. 854 of 2003, decided on 7th April, 2995 whereby the original application filed by the petitioner has been rejected.

The facts necessary for disposal of the petition are that the petitioner was offered appointment as a part time water carrier on compassionate ground under Rule 12 of the Part Time Water Carriers Scheme in

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Government High School, Bari. There is no dispute with regard to the fact that the petitioner joined as such on 15th March, 2003. On 16th April, 2003, i.e. just one month after the petitioner had joined, an order was passed by the Head Master, GHS, Bari, District Kinnaur which reads as follows:-

> "Despatch No.60/2003 Office of Headmaster,
> Government High School, Bari,
> Tehsil Nichar, District Kinnaur,
> Dated 16.4.2003.
>
> Subject: Regarding cancellation of appointment order of part-time water carrier.
>
> You are hereby informed that you were appointed vide Director of Education, Himachal Pradesh letter No. Edn-H(3)(B)(@)2-2/2002, under Rule 12, on 13.3.2003. But now as per letter No. Edn.-Knr(2)(2)15/02, 399-402 dated 9.4.03 received from Deputy Director of Education (s) District Kinnaur at Recong-:eo and Director of Education, Himachal Pradesh, letter No. Edn-H(3) (2)1-2/2003, your appointment under Rule 12 has been cancelled vide order dated 1.4.2003. Hence above letter no. is forwarded for your information."

The petitioner challenged the aforesaid order before the State Administrative Tribunal. The State in its reply filed before the Administrative Tribunal took the stand that since the applicant had been appointed as a

part time water carrier with the prior approval of the government and in the meantime, the government cancelled the orders of appointment and terminated the services of the applicant-petitioner, the order referred to above, was passed. In the reply filed before the Tribunal, no grounds were stated as to why the order in question was passed. The learned Tribunal has come to the conclusion that since the petitioner was appointed on compassionate grounds, the competent authority had exercised its discretion in offering appointment to him and, therefore, the same could be withdrawn later on on administrative ground. Consequently, the O.A. of the applicant-petitioner was dismissed. This order of the Tribunal is under challenge before us.

Once the petitioner was appointed as a part time water carrier, a civil right vested in him to continue as such. Even if he had to be removed, the principles of natural justice required that some notice should have been issued to the petitioner giving him an opportunity to put forward his case. It is not necessary that a detailed inquiry be held in the matter. Since the petitioner is admittedly a part time water carrier, the requirements of

natural justice would be met by giving him a notice and taking into consideration the reply of the petitioner.

Surprisingly, in the present case, we find that before the Tribunal no reasons were stated as to why the order of appointment was cancelled. It would be pertinent to mention in this behalf that before the Tribunal, the original file had been produced and the order passed on the said file has been quoted by the Tribunal in its order dated 9th April, 2003. Even this order does not state what is the reason, for canceling the appointment of the petitioner. The reasons have now been supplied in the reply filed in the present writ petition. In the reply, now filed before this court, it is stated that in fact the petitioner was not eligible for compassionate appointment as a part time water carrier in terms of Clause 12 of the Scheme.

We are of the considered opinion that before taking any action which affects the civil right of any person, the government was duty bound to issue notice to him. The stand now taken is that the petitioner was not eligible and was wrongly appointed. We are not going into the merits of this contention. Even if that be so, the government could not have cancelled the appointment without giving an opportunity to the petitioner. We,

therefore, allow the writ petition and set aside the order of the Tribunal as well as the order of termination, Annexure P-3. Since the petitioner admittedly has not worked during this period, he is held entitled to 50% of the back wages. Liberty is reserved to the government to take appropriate action to cancel the appointment of the petitioner in accordance with law.

CMP No. 1436 of 2005

In view of the disposal of the main petition this application also stands disposed of.

(Deepak Gupta), J.

December 7 2006(K) (S.S.Thakur), J.